



**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	
)	
Rules and Regulations Implementing the)	CG Docket No. 02-278
Telephone Consumer Protection Act of 1991)	
)	
Junk Fax Prevention Act of 2005)	CG Docket No. 05-338

COMMENTS OF THE SOCIETY FOR HUMAN RESOURCE MANAGEMENT

The Society for Human Resource Management (“SHRM”) submits the following comments in response to the Federal Communications Commission’s (“FCC” or “Commission”) Notice of Proposed Rulemaking and Order on the Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991 (“*Notice*”), which was published in the *Federal Register* on December 19, 2005.¹ In the *Notice*, the FCC, in response to the Junk Fax Prevention Act of 2005,² sought

¹ *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991 and Junk Fax Prevention Act of 2005*, Notice of Proposed Rulemaking & Order, 70 Fed. Reg. 75102 (2005).

² Junk Fax Prevention Act of 2005, Pub. L. 109-21, 119 Stat. 359 (2005) (“Junk Fax Act”).

comments on an established business relationship (“EBR”) exception to the rules prohibiting the faxing of unsolicited advertisements, a proposed requirement to include an opt-out notice and contact information on facsimile advertisements, and other potential rules implementing the Junk Fax Act.

SHRM is the world’s largest association devoted to human resource (“HR”) management. Representing more than 200,000 individual members, the Society’s mission is to serve the needs of HR professionals by providing the most essential and comprehensive resources available. As an influential voice, the Society’s mission is also to advance the HR profession to ensure that it is recognized as an essential partner in developing and executing organizational strategy. Founded in 1948, SHRM currently has 568 affiliated chapters and members in more than 100 countries.³ Many of these chapters are unincorporated associations that operate with limited resources and primarily through the efforts of volunteers.

In addition, both the Human Resource Certification Institute (“HRCI”) and the SHRM Foundation are affiliated with SHRM. HRCI, which is physically located within SHRM, is an independent, internationally recognized certification body for the HR profession. Its certifications require professionals to demonstrate their expertise in the core principles of HR practice and the application of those principles. The SHRM Foundation, also physically located within SHRM, is a 501(c)(3) not-for-profit affiliate of SHRM. The Foundation funds research to

³ SHRM is located at 1800 Duke St., Alexandria, VA 22314. Additional information about SHRM may be found on its Internet Web site. www.shrm.org.

advance the HR profession and enhance the effectiveness of HR professionals, and also conducts an annual fundraising campaign.

SHRM, like many organizations, has a strong interest in the Commission's "Junk Fax" rules as an association that provides a variety of educational and professional development information to its members and chapters through various forms of communication, including faxes. Some of these fax communications could be considered, under the Commission's definition, commercial faxes (*i.e.*, unsolicited advertisements), which could subject SHRM and its chapter affiliates to this regulation.

SHRM urges the FCC to: 1) adopt rules that recognize an EBR exception to the prohibition against unsolicited commercial faxes; 2) treat nonprofit professional or trade associations differently from commercial entities by exempting the former from any notice and opt-out requirements; 3) extend the duration of an EBR to 30 months for professional or trade associations that are tax-exempt organizations; 4) ensure that such associations, if required to process opt-out requests, have at least 45 days in which to do so; and 5) delay the effective date of any notice and opt-out rules until 90 days after publication in the *Federal Register*.

I. THE FCC SHOULD ADOPT RULES THAT RECOGNIZE AN EBR EXCEPTION

SHRM supports the Commission's proposal to amend its rules, in its consistency with congressional intent, to recognize an EBR exception to the

prohibition against the sending of unsolicited advertisements by fax.⁴ Subject to its comments advocating the creation of an exception for nonprofit professional or trade associations, SHRM also supports the FCC's proposal to require those senders relying upon an EBR to provide notification to recipients of their rights to opt out of future faxes and to provide contact information for making such a request.

SHRM will not belabor the record discussing the many sub-issues associated with EBRs and opt-out procedures. Many others can be expected to address those points in great detail. Suffice it to say that SHRM believes Congress has established a fair balance between the rights of senders of commercial faxes to those persons and entities with which the sender has an EBR and the rights of those recipients to decline future faxes.⁵ Moreover, the FCC's forfeiture authority, pursuant to Section 503 of the Communications Act of 1934, as amended ("34 Act"),⁶ and the ability of recipients to file lawsuits for the facsimile transmission of unsolicited advertisements, not otherwise permitted by Section 227 of the 34 Act,⁷ constitute sufficient protections against "fax abusers."

⁴ *Notice*, at ¶9.

⁵ *See generally*, 151 CONG. REC. H5265 (Daily Ed. June 28, 2005) (Remarks of Rep. Edward Markey). "Many businesses have complained that written permission is too onerous a regulatory requirement for many of the faxes that they stipulate are routinely sent in the ordinary course of business to established customers or customers requesting such faxes. This has been done by reputable business entities presumably without complaints from the recipients of such faxes." Mr. Markey's comments are equally applicable to nonprofit entities.

⁶ 47 U.S.C. §503.

⁷ *Id.*, at §227.

II. THE COMMISSION SHOULD TREAT NONPROFIT PROFESSIONAL OR TRADE ASSOCIATIONS DIFFERENT FROM COMMERCIAL ENTITIES

A. The Notice and Opt-Out Requirements Should not Apply

As a condition of permitting the transmission of unsolicited advertisements by fax to those persons and entities with which the sender has an EBR, Congress mandated that “the sender of a facsimile advertisement ... provide specified notice and contact information on the facsimile that allows recipients to ‘opt-out’ of any future facsimile transmissions from the sender; and ... specifies the circumstances under which a request to ‘opt-out’ complies with the Act.”⁸ In other words, senders of commercial faxes must inform “EBR recipients” that they may opt-out from future faxes and provide a mechanism for opting out of these faxes. SHRM believes that, as a general rule, this constitutes a workable and equitable compromise between the right to send commercial faxes and the right to decline future faxes.

However, SHRM also believes that the Commission should adopt an exception to this proposed requirement for nonprofit professional or trade associations. Section 2(e) of the Junk Fax Act specifically authorizes the Commission to “consider exempting nonprofit organizations from the [statute’s] notice requirements.”⁹ As their names suggest, the primary purpose of these entities is not to make profits, but deliver educational programs and information to members. The revenues obtained by these organizations are used to advance their

⁸ *Id.*, at ¶4.

⁹ *Notice*, at ¶26.

respective missions and not to reward their shareholders. Because of their nonprofit missions, these organizations must, therefore, be focused on serving their natural membership bases. As a membership organization, communication with and to SHRM members is vitally important.

In addition to news and public policy information, SHRM sends its chapters and membership information about professional development opportunities and resources, such as upcoming seminars and new books. However, the primary purpose of sending this information to HR professionals is to provide them with access to additional tools and resources that can advance their knowledge and skills within their profession. It is SHRM's policy to stop sending faxes upon request. SHRM, its affiliates or other nonprofit professional or trade associations have no interest in irritating their clientele by engaging in unwanted marketing. As noted above, Congress realized this when it passed the Junk Fax Act and indicated an intent to treat these associations differently than commercial businesses.

Moreover, an exception for these organizations is also warranted because many of them, including a considerable number of SHRM's local affiliates, are unincorporated associations that operate with limited resources and primarily through the efforts of volunteers. While SHRM is confident that its chapters, both large and small, would make good faith efforts to comply with any applicable FCC rules, mistakes will likely occur.

Such an innocent mistake could unfairly expose SHRM's chapters and even its members to liability. For example, SHRM has been advised that the state of

Illinois sometimes holds individual members of an unincorporated association liable for the actions of another of its members. Since Section 227(f) of the 34 Act permits states to enforce its provisions, a failure of the FCC to grant this exception could possibly expose these unincorporated associations and their volunteers to risks of personal liability, especially if coupled with state law claims. This level of risk could well discourage individuals and their employers from participating in the important work of SHRM and its local chapters, as well as the work of the countless other membership organizations around the nation. The FCC should, therefore, follow Congress' express invitation and create an exception for nonprofit professional or trade associations.

B. The Time Period for EBRs Should be Extended to 30 Months for Professional or Trade Associations

As indicated above, SHRM generally supports the FCC's EBR proposals, including the proposed 18/3-month limitation on the duration of an EBR. While the 18-month duration applies to solicitations following a purchase or transaction, the 3-month period applies after an application or inquiry. However, experience shows that, for professional or trade associations, individual members often "float into and out of" these organizations, while retaining an interest in the organization's mission. SHRM has found that HR professionals, especially those in smaller companies, government agencies and other nonprofits, may not be a member for a year or two, while still retaining an interest in SHRM. A member's sponsoring entity may face tightened budgets, such that it does not pay association dues for one

or more years. Also, busy HR managers in small companies or organizations, who may also have other management duties, may simply forget to renew their SHRM membership.

However, based on more than 50 years of experience, SHRM often finds that these “lapsed members” retain a strong interest in SHRM’s work and resources well beyond 18 months after the last “transaction” between SHRM and the individual or organization as a member. Individuals generally like to continue receiving information about both SHRM membership and HR resources, despite not being dues-paying members for a period of time. Indeed, it is not surprising to see former SHRM members renew their memberships after receiving a reminder fax. Likewise, many former members still respond to faxes by purchasing professional HR materials or enrolling in educational programs. Of course, SHRM regularly stops faxing (or e-mailing, for that matter) commercial materials to any member, former members or inquirers upon their request.

In view of the above, SHRM submits that, for nonprofit professional or trade associations, an 18-month life for an EBR is too short. The FCC should adopt a more reasonable time period, such as one of 30 months, for professional or trade associations that are tax-exempt nonprofit organizations.

C. Nonprofit Professional or Trade Associations Should be Given at Least 45 Days to Process Opt-Out Requests, Should They be Required

In the event that the FCC decides not to grant a general exception from notice and opt-out requirements, SHRM submits that nonprofit professional or

trade associations should be given at least 30 days and, preferably, 45 days in which to process any opt-out requests. It is critical for the Commission to keep in mind that, while many of these organizations at the national level have professional staff to handle regulatory compliance matters and to process requests to opt-out from future faxes, many state and local nonprofit professional or trade associations are staffed by volunteers. Volunteers are just that: individuals giving up hours of their time, resources, and expertise for the benefit of their chosen profession and colleagues.

Many of SHRM's 568 affiliated chapters are operated on a volunteer basis. A local chapter may, for example, plan a bi-monthly luncheon meeting and charge a fee to recover the meeting's costs. One or two volunteers may send a "hold-that-date" notice (an advertisement) for such luncheon by fax, several months or weeks in advance of the actual event. However, these volunteers rarely staff the SHRM affiliate's "virtual office" to receive and process any "opt-out" requests. Should such a request be received by a volunteer, it cannot realistically be "processed" in a short period of time. Volunteers and, thus, their nonprofit professional or trade associations should be given at least 30 days and, more realistically, 45 days in which to process opt-out requests, should these entities not be exempted altogether, as contemplated by Congress in Section 2(e) of the Junk Fax Act.

III. THE COMMISSION SHOULD ESTABLISH A 90-DAY EFFECTIVE DATE IN ORDER TO PERMIT BUSINESSES AND NONPROFITS REASONABLE TIME TO IMPLEMENT THE NEW RULES

SHRM respectfully requests that the Commission establish a 90-day effective date. The 90-day period is necessary for businesses and nonprofits to implement any new rules that would require the establishment of a notice and opt-out system.

Although SHRM has recommended that the FCC create an exception from any notice and opt-out system for nonprofit professional and trade associations (as expressed through congressional intent), in the event that the FCC declines to include an exception for nonprofit and professional trade associations, SHRM and its 568 affiliates would certainly comply with the applicable FCC rules. However, immediate compliance with the notice and opt-out system rules is simply not realistic. SHRM's Marketing and Business Development Department has studied what steps would be needed to ensure compliance with new Junk Fax rules. This evaluation determined that SHRM would need to conduct a complete audit of all commercial and other mass faxes that are sent from SHRM and its affiliates, including HRCI and the SHRM Foundation, and any faxes sent by SHRM on behalf of any of its local chapters. This task is complicated by the fact that SHRM and HRCI have separate address databases.

SHRM would also need to provide compliance training about any new rules for the SHRM staff and all affiliates to ensure that they develop and implement any process changes. Training materials will need to be developed to outline appropriate procedures for compliance. Marketing materials must also be reviewed

and, possibly, modified or even redesigned. Also, since SHRM (and probably most other larger associations) operates its marketing efforts from a database of members and prospective members, such database must be reviewed and modified for compliance.

As a leader in the HR field, which certainly includes the areas of process implementation and employee training, SHRM submits that, in order to ensure effective compliance with any new rules, both companies and nonprofits would need a reasonable period, most likely at least 90 days, from the FCC's release of an order in this proceeding, to implement compliance procedures for any new rules. Therefore, we strongly recommend that the Commission set an effective date no earlier than 90 days from the publication of any new rules in the *Federal Register*.

IV. CONCLUSION

For the reasons set forth above, SHRM urges the FCC to: 1) adopt rules that recognize an EBR exception to the prohibition against unsolicited commercial faxes; 2) treat nonprofit professional or trade associations different from commercial entities by exempting the former from any notice and opt-out requirements; 3) extend transactional EBR periods to 30 months for professional or trade associations that are tax-exempt nonprofit organizations; 4) ensure that such associations, if required to process opt-out requests, have at least 30 days in which to do so; and 5) delay the effective date of any notice and opt-out rules until 90 days after publication in the *Federal Register*.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Kathron Compton', with a large, stylized flourish at the end.

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Dated: January 18, 2006

CERTIFICATE OF SERVICE

I, Kenya N. Wiley, do hereby certify that the foregoing COMMENTS OF THE SOCIETY FOR HUMAN RESOURCE MANAGEMENT were served on January 18, 2006, by e-mail, upon the following:

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